Weltex Knitwear Industries Sdn Bhd v Law Kar Toy & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1–25–60 OF 1997
ABDUL KADIR SULAIMAN J
26 SEPTEMBER 1998

Labour Law *— Employment — Termination of employment — Dismissal — Employee claimed that she was forced to sign resignation letter — Employer denies fact of dismissal — Whether employee was dismissed without just cause or excuse — Whether there was actually a dismissal by employer as claimed — Whether employee resigned on her own volition*

The applicant applied for an order of certiorari to quash Award No 88 of 1997 ('the award'), granted by the chairman of the Industrial Court. It was held in the award that the dismissal from service of the first respondent by the applicant was without just cause and excuse. The first respondent's pleadings, filed in the Industrial Court, claimed that the applicant had forced her into signing a printed letter of resignation ('C–1'), thus amounting to a dismissal without just cause or excuse, and contrary to the principles of natural justice and an unfair labour practice. The applicant denied in the statement in reply of the fact of the dismissal and averred that the first respondent on her own volition tendered her resignation from the service of the company. The chairman of the Industrial Court believed the version of evidence put forward by the first respondent over that of the applicant and from there drew an inference that the first respondent was dismissed by the applicant without just cause or excuse. Thus, this application.

Held, allowing the application with costs:

(1) Having perused the records of the proceedings before the learned chairman, the court cannot find any evidence adduced to show that the first respondent was told that she would be dismissed by the applicant if she does not tender her resignation. Therefore, the findings of the learned chairman on this issue is but an inference drawn and lacks a rational probative basis in fact or in law (see p 363B–C, F).

(2) If the fact of dismissal is not in dispute, the burden is on the company to satisfy the court that such dismissal was done with just cause or excuse. However, where the fact of dismissal is in dispute, it is for the workman to establish that he was dismissed by his employer. On the facts, it is the first respondent who asserts that she was dismissed and the applicant denies it. So, it is for the first respondent to establish so by evidence, in which she had failed (see pp 363G–364A).

(3) On the facts, the learned chairman, in support of her findings against the applicant, have failed to consider the evidence of COW–2, whereby if she had, she would not have concluded that

the assertion by the first respondent was duly supported by other evidence (see p 365A). A

(4) The court found that the learned chairman had committed an error of law when she based her decision upon the first respondent's confused state of mind when she signed C–1. From the evidence adduced before her, the first respondent from her conduct before the signing of it, had all the time with her to be in a proper state of mind to decide on the signing (see p 365B). B

[Bahasa Malaysia summary

Pemohon memohon suatu perintah certiorari membatalkan Award No 88 tahun 1997 ('award tersebut'), yang diberikan oleh Pengerusi Mahkamah Perindustrian. Adalah diputuskan dalam award tersebut bahawa pemecatan dari perkhidmatan responden pertama oleh pemohon telah dibuat dengan tidak adil dan tanpa alasan. Pliding responden pertama yang difailkan di Mahkamah Perindustrian, mendakwa bahawa pemohon telah memaksanya menandatangani suatu surat bercetak perletakan jawatan ('C-1'), mengakibatkan memecatan kerja secara tidak adil dan tanpa alasan, dan bercanggah dengan prinsip keadilan semulajadi dan merupakan amalan buruh secara tidak adil. Pemohon telah menafikan dalam suatu kenyataan jawapan fakta pemecatan dan membalas bahawa responden atas kesalahan sendiri telah mengemukakan perletakan jawatan dari perkhidmatan syarikat tersebut. Pengerusi Mahkamah Perindustrian mempercayai versi keterangan yang dikemukakan oleh responden pertama mengatasi keterangan pemohon dan, daripada itu, telah membuat suatu kesimpulan bahawa responden pertama telah dipecat oleh pemohon secara tidak adil dan tanpa alasan. C D E F

Diputuskan, membenarkan permohonan dengan kos:

(1) Setelah meneliti rekod prosiding di hadapan Pengerusi yang bijaksana, mahkamah tidak menjumpai sebarang keterangan yang boleh dikemukakan untuk menunjukkan bahawa responden pertama telah diberitahu yang beliau akan dipecat oleh pemohon sekiranya beliau tidak mengemukakan surat perletakan jawatan. Dengan ini, penemuan oleh Pengerusi yang bijaksana dalam isu ini adalah tidak lain dari suatu andaian semata-mata dan tidak mempunyai sebarang probatif rasional yang berasaskan fakta dan dalam undang-undang (lihat ms 363B–C, F). G H

(2) Sekiranya fakta pemecatan tidak dipertikaikan, beban adalah di atas syarikat untuk menyakinkan mahkamah bahawa pemecatan tersebut telah dibuat secara adil atau beralasan. Walau bagaimanapun, di mana fakta pemecatan dipertikaikan, adalah untuk pekerja untuk menunjukkan bahawa beliau telah dipecat oleh majikannya. Daripada fakta, responden pertamalah yang telah menegaskan bahawa beliau telah di pecat dan pemohon menafikannya. Dengan ini, adalah atas responden pertama untuk I

menunjukkan begitu dengan keterangan, yang mana beliau telah tidak berjaya (lihat ms 363G–364A).

(3) Daripada fakta, Pengerusi yang bijaksana, dalam menyokong penemuan beliau terhadap pemohon, telah gagal untuk menimbangkan keterangan COW-2, yang mana sekiranya beliau menimbangkannya, beliau tidak akan membuat kesimpulan bahawa penegasan oleh responden pertama adalah disokong oleh keterangan lain (lihat p 365A).

(4) Mahkamah mendapati bahawa Pengerusi yang bijaksana telah membuat kesilapan undang-undang apabila beliau membuat keputusan berdasarkan kepada kekeliruan responden pertama menandatangani C-1. Daripada keterangan yang dikemukakan kepadanya, responden pertama daripada tingkah laku beliau sebelum menandatanganinya, adalah berada dalam keadaan minda yang sempurna sebelum membuat keputusan untuk menandatangani (lihat ms 365B).]

Notes

For cases on termination of employment which amounts to a dismissal, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 791–829.

Cases referred to

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union [1995] 2 MLJ 317 (refd)

Tata Robinson Fraser Co Ltd v Labour Court 1989–II–LLJ 443 (refd)

Wong Chee Hong v Cathay Organization (M) Sdn Bhd [1988] 1 MLJ 92 (refd)

Legislation referred to

Evidence Act 1950 s 101

Industrial Relations Act 1967 s 20(1)

A Ramadass (*Ramadass & Associates*) for the applicant.

PG Jayendran (*L Pereira & Associates*) for the first respondents.

Cur Adv Vult

Abdul Kadir Sulaiman J: This dispute between the applicant and the first respondent came before the second respondent, the Industrial Court, following a reference by the Minister of the first respondent's representation made under s 20(1) of the Industrial Relations Act 1967. The issues in the dispute are in the pleadings filed by the parties with the Industrial Court. There is no dispute as to the fact that the first respondent joined the service of the applicant on 1 November 1973 and her last drawn salary was RM1,300 per month.

By her statement of case, the first respondent avers that she worked for the applicant as a supervisor. In early 1993, the applicant summarily ordered her to be a 'sample sewer'. The applicant was not satisfied with her production capacity and required of her to produce more to be commensurate with her salary paid by the company. Later, the applicant forced her into signing a printed letter of resignation to take effect from 5 June 1995 marked as exh C–1. Therefore, she claimed that she was dismissed from her job with the applicant from that effective date and that this dismissal was without just cause or excuse, and contrary to the principles of natural justice and an unfair labour practice. She, therefore, claims for reinstatement as a supervisor without loss of any benefit monetary or otherwise. The applicant denies in the statement in reply of the fact of the dismissal and avers that the first respondent on her own volition tendered her resignation from the service of the company on 5 June 1995.

Therefore, in the light of the pleadings, it is for the first respondent to prove on the balance of probability that she was being dismissed from the service by the applicant and that exh C–1 was forced upon her by the applicant against her will. At the conclusion of the hearing before the Industrial Court, it handed down Award No 88 of 1997 ('the impugned award') on 27 February 1997 holding that there was the dismissal from service of the first respondent by the applicant and that such dismissal was without just cause and excuse. Accordingly, the learned chairman ordered the applicant to pay backwages to the first respondent from the date of the dismissal to the last date of the hearing before her in the sum of RM24,700 and in lieu of reinstatement, she ordered that compensation in lieu be paid at the rate of one month's salary for every year of completed service for the period from the date of joining to the last date of the hearing amounting to RM29,000. By this application, the applicant seek for an order of certiorari to quash the said award of the learned chairman of the Industrial Court.

In the impugned award, the learned chairman gave her reasons for arriving at the decision. It is on a finding of fact before her based on the evidence adduced by both parties. On the evidence, she believed that version of the evidence put forward by the first respondent over that of the applicant and from there, drew an inference that the first respondent was dismissed by the applicant without just cause and excuse. This matter before the court is not an appeal against the said decision of the learned chairman but a proceeding for judicial review of the decision. That being the case, one of the grounds for the applicant to succeed in this application for certiorari is to satisfy this court that the decision of the Industrial Court is perverse or the decision reached is unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at the impugned decision (see *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union* [1995] 2 MLJ 317).

In this case, after analysing the evidence put in by the parties, the learned chairman concluded as follows as appeared at p 11 of the impugned award:

A From the totality of the evidence adduced before the court, it seems clear that there was some kind of threat and/or coercion and/or persuasion made by COW–2, as a result of which the claimant subsequently submitted her letter of resignation. The court holds that the claimant had not resigned voluntarily, but that she was placed in a position in which she really had no option but to tender her resignation because otherwise she would in any case be dismissed. B This forced resignation tantamounts to a dismissal of the claimant without just cause and excuse.

and she accordingly ordered backwages and compensation in lieu of reinstatement. Having perused the records of the proceedings before the learned chairman, I cannot find any evidence adduced to show that the first C respondent was told that she would be dismissed by the applicant if she does not tender her resignation. Therefore, the findings of the learned chairman on this issue is but an inference drawn. Is she justified in so drawing such an inference? There is a clear inference from the evidence by the first respondent herself that COW–2, the production manager, did not say that he would dismiss her if she did not sign the said resignation form. As to the D submission of the letter of resignation by the first respondent, from the evidence, she had all the opportunity to inform COW–1 or her friend who helped her to fill in the said form for her of any threat, coercion or inducement or anything else which would affect her feeling to act in the way she did. But this was not done. Instead she signed the resignation letter C–1 and left it with the applicant. COW–1 may well be busy rushing E for her appointment but if it is true as the first respondent alleged that she was forced to resign by COW–2, she would be able to communicate such information to COW–1. What was the confusion in her state of mind and of the fear that she decided to put her signature on to the form? In the circumstances, on the evidence, clearly the decision arrived at by the F learned chairman is unreasonable. The first respondent asserts that she told others about her forced resignation. Where are those others or some of them? In the circumstances, I find that the decision of the learned chairman on the evidence before her lacks a rational probative basis in fact or in law. On this ground alone, I am satisfied that the learned chairman has committed an error of law in the decision making process and the impugned G award ought to be quashed.

Next is the burden of proof on the issue of forced resignation raised by the first respondent. The law is clear that if the fact of dismissal is not in dispute, the burden is on the company to satisfy the court that such dismissal was done with just cause or excuse. This is because, by H the 1967 Act, all dismissal is prima facie done without just cause or excuse. Therefore, if an employer asserts otherwise, the burden is on him to discharge. However, where the fact of dismissal is in dispute, it is for the workman to establish that he was dismissed by his employer. If he fails, there is no onus whatsoever on the employer to establish anything for in such a situation no dismissal has taken place and the I question of it being with just cause or excuse would not at all arise (see *Wong Chee Hong v Cathay Organization (M) Sdn Bhd* [1988] 1 MLJ 92). In the present case, it is the first respondent who asserts

that she was dismissed and the applicant denies it. So, it is for the first respondent to establish so by the evidence. From the evidence before the learned chairman, can it be said that the applicant by its conduct had placed the first respondent in a position in which she really has no option but to tender her resignation for an inference to be drawn that she is dismissed by the applicant? I do not think so. The applicant was no doubt unhappy with her performance by asking her to improve. So it is up to the first respondent to see that her performance improved or leave the company. On the fact, she chose the latter without any threat by the applicant to dismiss her for her poor performance. However, in her pleading before the Industrial Court, she avers that the production manager of the applicant intimidated and threatened her and forced her to sign a printed letter of resignation supplied to her. Hence, her reason for saying that it was a dismissal and that it was so done without just cause or excuse. The learned author, Prof SB Rao in his book entitled *Cases and Material on Resignation, Transfer and Suspension* at p 28 quoted the following passage from *Tata Robinson Fraser Co Ltd v Labour Court* 1989–II–LLJ 443:

> To make out a case that his resignation was not voluntary and his resignation was obtained under undue influence, misrepresentation, fraud or the like, the employee has to establish that he was not allowed time to think over the matter, not allowed to come out of the office but was physically restrained and he had signed under protest.

However, in the present case, there was no evidence for the first respondent to the like effect bearing in mind the burden is on her to establish the allegation to enable an inference in her favour be made. Also, s 101 of our Evidence Act 1950, puts such a burden on the first respondent. She did not deny that exh C–1 contains her signature. In the light of the applicant's denial of a forced resignation being imposed upon her, the burden is on her to establish her allegation over the matter. This she had failed. Hence, the conclusion arrived at by the learned chairman in the impugned award that there was such a dismissal has resulted in an error of law having been committed by her.

At p 9 of the impugned award, the learned chairman in support of her findings against the applicant said:

> As for the claimant's assertion that COW–2 had told her the company can employ somebody else for a lesser salary this is supported by the fact that a sample sewer was employed for RM700 per month to replace the claimant.

Is that all to it? Looking at the evidence, COW–2 explains it as recorded at p 18 of the records of the proceedings:

> It would not make sense to dismiss the claimant if she is technically skilled. With her I get 280 samples. Without her we are worse off. We could only get replacement last year and only partial replacement. The replacement only took the sewing part — the unskilled part. She does not have the technical skill. Then we have another person to supervise.

Therefore, if the learned chairman had properly considered this part of the evidence of COW–2, she would not have concluded that the assertion by the first respondent was duly supported by other evidence. Hence, her decision on this is aspect of the matter lacks a rationally probative basis in fact.

I also find that the learned chairman had committed an error of law when she based her decision also upon the first respondent's confused state of mind when she signed C–1. From the evidence adduced before her, the first respondent from her conduct before the signing of it had all the time with her to be in a proper state of mind to decide on the signing. She was with her colleague to seek the advice and to fill up and sign an entirely new resignation form than the one given to her by COW–1.

Under the circumstances, the impugned award of the Industrial Court cannot withstand the test for judicial review. For those reasons stated above, after having considered also the submissions made by learned counsel for both parties, I allow this application of the applicant with costs. The impugned award is accordingly quashed. The first respondent on her own accord had resigned from the service with the applicant.

Application allowed.

Reported by Mohd Rizal Abidin